IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 278 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHAH SHRAVANKUMAR AMBALAL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 278 of 1993

MR VIJAY H PATEL for Petitioner No. 1

Ms N V Joshi, APP for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 06/03/2003

ORAL JUDGEMENT

The petitioner above named has preferred this revision application under section 397 read with section 401 of the Code of Criminal Procedure, 1973 in order to

challenge the judgment and conviction order recorded on 12.7.1993 by the learned Special Judge (Addl.Sessions Judge) at Mehsana in Essential Commodities Case No.6/90 under which the learned trial Judge convicted the present petitioner for offence punishable under section 7 read with section 3 of the Essential Commodities Act and sentenced him to suffer R.I. for three months. The trial court also directed that the petitioner shall pay fine of Rs.100/- and in default of payment of fine, the petitioner shall undergo further S.I for seven days.

2. It appears from the record that on 21.11.1986, the officers of the Civil Supplies Department of the Government of Gujarat had visited the shop of the present petitioner situated at village Mansa, Vijapur Taluka of Mehsana district where the petitioner was dealing in sale and purchase of oil seeds, groundnut oil etc. During the course of the said visit, some irregularities were noticed by the said officers and therefore, seizure order was passed on 21.11.1986 under which 65 tins of groundnut oil were seized.

3. Thereafter the said shop was again visited by the officers of the said department on 10.3.1987 and at that time it was noticed that though those 65 tins were seized, there were only 51 oil tins and 14 oil tins were missing. The prosecution, therefore, alleged that the present petitioner has committed violation of the said order of seizure.

4. It was further alleged in the said case that 30 oil tins were ordered to be confiscated by order dated 30.11.1986. That out of that, 20 oil tins were found present and six oil tins were disposed of by the petitioner without depositing the amount of the sale proceeds before the State Government. It was further alleged that as per the stock register, 195 oil tins were found in stock. Out of them 24 oil tins were ordered to be confiscated and, therefore, 14 oil tins ought to be there. However, it was noticed that there was an excess of 17 oil tins in stock and the petitioner failed to produce a bill to show the purchase thereof. It was further alleged that gram dal was found less by 5 quintals 36 kgs. It was also alleged that the petitioner had not shown the year and month of production and the price or batch no. were not shown on 19 oil tins found in stock with the petitioner. It was further alleged that it was not mentioned as to the capacity in which the aforesaid essential articles were sealed by the petitioner. It was further alleged that the petitioner had sold different oil tins at different prices. It was

also alleged against the petitioner that certain goods were sold by him without payment of municipal octroi and that fortnightly returns were not submitted.

5. On receiving the said complaint, the learned Special Judge recorded the plea of the petitioner. The petitioner pleaded not guilty to the said accusations and, therefore, the evidence was recorded.

6. During the course of evidence the trial court recorded the evidence of witness and at the close of the trial further statements were recorded and arguments were heard and the trial court found the petitioner guilty for the aforesaid offence and, therefore, he was convicted accordingly. Feeling aggrieved by the said judgment and order, the petitioner had preferred this revision application before this court, since the punishment imposed by the trial court was only three months' R.I. and since the case was conducted in a summary manner under section 260 of the said Code.

7. The revision application was admitted and, therefore, it was required to be finally heard.

At the hearing Mr V H Patel, learned Advocate for the petitioner had argued the matter on behalf of the petitioner, original accused. On the other hand, the matter was argued by Ms. N V Joshi, learned APP on behalf of the State. During the course of his argument, Mr. V H Patel has contended that so far as the payment of octroi duty is concerned, it may amount to an offence under the municipal law but it is not an offence under the Essential Commodities Act. Let us take it that these offences may not form a part in the present case. So far as the sale of the oil tins at different prices is concerned, he has argued that the petitioner was not a licensee of a fair price shop and therefore, there is no restriction on sale of oil tins at a particular price. Records do not show that the petitioner was simply a fair price shop holder. There is no evidence on record to show that he was required to sell oil tins at a particular rate. Even otherwise, the price of oil may change from time to time. There is no evidence to show that the petitioner was required to sell the oil tins at a particular rate on a particular date and that he has committed breach of the said requirement. In that view of the matter, so far as the sale of oil tin at different prices is concerned, no offence can be said to have been committed by the present petitioner. However, so far as gram dal is concerned, it has come in evidence that it was found less by 5 quintals and 36 kgs. The

petitioner's statement was recorded immediately on the spot and no explanation was set out by the petitioner as to why the said stock was found less as alleged. However, during the course of trial, the petitioner has tried to explain that he had carried the said stock at his residence for cleaning purpose. Now, this was a stock which was seized by the Supply department and, therefore, it was not required to be shifted to his residence for any purpose. Even if we take it that the petitioner carried the said stock to his residence for cleaning purpose, he could have obtained permission from the Supply department.

8. So on the one hand, the petitioner has not explained as to the shortage of stock and on the other hand, his defence is that he had carried the same at his residence for cleaning purpose which appears to be an afterthought and, therefore, the said explanation is required to be rejected. In that view of the matter, it has to be held that there was shortage of stock. Similarly, with respect to the oil tins, an attempt was made by Mr Patel to argue that on the one hand there is shortage of 14 oil tins and on the other hand there is excess of 17 oil tins. Two things cannot be clubbed together. So far as the shortage of 14 oil tins is concerned, there is a case that the said oil tins were 'Dharti' brand oil tins. So far as the excess stock is concerned, it comes from a different brand. Therefore, the two things cannot be clubbed together and cannot be mixed together. It has also been argued by Mr Patel that there may be some error in counting the oil tins. The oil tins were counted in presence of the petitioner and panchnama was also drawn and the signatures were also obtained from the panchas. No question was put to the witness that there was some error in counting the oil tins. Statement of the petitioner was recorded and there also he has not disclosed anything to support the said defence. Therefore, it is not acceptable that there was a genuine and valid defence set out by the petitioner to explain the aforesaid shortfalls. Then with respect to the allegation that the details as to the order in which the oil tins were produced and the price thereof etc. were not recorded on those oil tins, it is not the case of the petitioner that this was not the requirement of law. At the same time, the petitioner has nowhere explained as to why those details were not disclosed on those oil tins.

9. It has also been argued by Mr V H Patel, learned Advocate for the petitioner that the order does not disclose the correct name of the order under which the

aforesaid violations were found to have been committed by the petitioner. It seems that the name of the order is "Gujarat Essential Articles (Licensing Control and Stock Declaration) Order, 1981 (for short, 'the Order'). This order was promulgated under section 3 of the Essential Commodities Act. However, while referring the said Order, the trial court has referred in para 7 the relevant clause of the said Order (There the Gujarati version has been taken up in para 7 because the judgment was rendered and pronounced in vernacular language). There is no material difference in showing the name of the Order in question. Even otherwise, if there is some technical error in mentioning the name of the Order in the judgment of the trial court, the judgment cannot be treated to be illegal when no prejudice is proved to have been caused to the petitioner.

10. It has also been argued by Mr Patel that the said Order was not produced on record. Now the orders passed by the State Government or by the Central Government in exercise of the powers conferred on them by section 3 of the said Act are gazetted and, therefore, the Court can take judicial notice of those orders even if those orders are not produced on the records of the Court. It is nobody's case that such an order was not shown to the Court. The Court has referred Order of 1981 by its correct name and when the relevant clause of the said Order has also been referred in the judgment of the trial court, it has to be accepted that the Order of 1981 must have been shown to the court below. Even otherwise when the order is a gazetted order, it would not be extremely necessary for the prosecution to produce the same on the record of the trial court and to get it exhibited. An attempt was also made to argue that there may be some evaporation which could cause loss to the stock. So far as gram dal is concerned, it would be very difficult to accept that because of evaporation, there may be shortage in stock. Any way, we find from the record of the trial court that witnesses were examined before the trial court. The petitioner was provided with an opportunity to cross examine the witnesses. The witnesses have stood the test of cross examination and their evidence has not been shaken to any extent during the course of the said cross examination. In that view of the matter, this being a revision, it may not be open to this court to brush aside the finding of fact recorded by the trial court. The trial court had an opportunity to witness the demeanor of witnesses when they tendered their oral evidence before the trial court. Oral evidence on record has been further supported by documentary evidence on record and there is no reason to reject the said evidence

on record when he witnesses of the prosecution were by and large the witnesses of the State Government. They had no axe to grind against the petitioner, no enmity between the two was there and, therefore, there is no reason to reject the testimony of these witnesses recorded before the trial court and even the panchas do not support the case of the State, then also, considering the nature of the evidence on record and considering the documentary evidence supporting the oral evidence, there is reason to reject the evidence on record. Therefore, it cannot be said that the judgment and conviction order of the trial court are illegal and perverse. When the judgment and conviction order of the trial court are not found to be illegal and perverse, it would not be open to this court to interfere with the finding of fact recorded by the trial court and cotnained in the said judgment and conviction order of the trial court.

11. At the end, Mr V H Patel, learned Advocate for the petitioner argued that the offence was committed long back and even the conviction was recorded long back i.e. on 12.7.1993 and considering the passage of time, this may be treated to be a fit case for setting aside the jail sentence and at the same time, the court may increase the amount of fine. It is true that the offence has taken place long back. At the same time, it is also required to be considered that simply because the court is unable to proceed with the hearing and disposal of the appeal, it would not be a ground for wiping out the jail sentence in all cases. At the same time, it has to be accepted that though the trial court has considered that there are as many as 8 offences committed by the petitioner and all the 8 offences have been proved, this court has observed as aforesaid that some of the facts even when held to be proved, it cannot be treated to be an offence under the Essential Commodities Act. Therefore, looking to the aforesaid observations, it would be necessary to reduce the quantum of jail sentence imposed by the trial court. In other words, when the trial court has imposed jail sentence of three months' R.I., it would be appropriate to reduce the same to two months.

12. In above view of the matter, this revision application is partly allowed. The judgment and conviction order of the trial court convicting the petitioner are confirmed. At the same time, the jail sentence imposed by the trial court is reduced to two months. In other words, the petitioner shall undergo R.I. for two months and shall pay fine of Rs.100/- and in default of payment of fine, he shall undergo a further

S.I. for 7 days for offence punishable under section 7 read with section 3 of the Essential Commodities Act, 1955 as well as clauses 23 and 24 of the Gujarat Essential Articles (Licensing Control and Stock Declaration) Order, 1981.

The petitioner is on bail. Therefore, his bail bonds are cancelled and the petitioner shall forthwith surrender to the custody. Office shall immediately send an intimation to the trial court so that the trial court may issue arrest warrant against the petitioner and may issue notice to the surety/sureties so that the petitioner may serve out the remaining sentence. Rule made absolute to the extent indicated. D.S. permitted.

6.3.2003. [D P Buch, J.]
msp